

1 JUDGE CHACHKIN (Cont'd.): Well, the first request  
2 is for documents relating to formation acquisition, etc. of  
3 Rainbow. And we are talking about, I assume -- what do you  
4 mean by formation? We are talking about a period from 1990  
5 through 1994? Wasn't Rainbow established earlier than that?  
6 What are we talking about here?

7 MR. BLOCK: Your Honor, you are correct that  
8 Rainbow was established earlier than that. We are looking  
9 here and this whole financial question issue, in general,  
10 relates to what Rainbow had in the way of financing in  
11 place, and what its prospecting for financing were.

12 The question about articles of incorporation and  
13 bylaws -- these documents certainly existed during the time  
14 period and would be subject to -- well, the question that  
15 the documents would be related to our ability to cross-  
16 examine Mr. Rey, Ms. Polivy, or other witnesses for Rainbow,  
17 concerning what -- this is the raw data. You know, all  
18 these requests. They would go one, two, three, four, five,  
19 six, seven. Are the raw data upon which one would be able  
20 to make a conclusion as to whether or not they were  
21 financially qualified or not.

22 Not just taking their blank statement. Yes, we  
23 are financially qualified, ready, willing and able to  
24 construct. But going behind that and looking at what there  
25 really was.

1           And, Your Honor, are -- here is to get to the raw  
2 data and not just accept it. If -- from Mr. Rey that he was  
3 ready, willing and able to construct.

4           I think one, two and three and four, are all a  
5 piece in that way, and some other ones as well, at getting  
6 behind the vague statements and getting into the hard data  
7 of this case.

8           JUDGE CHACHKIN: Mr. Eisen, you say the staff may  
9 already have some of this material. What is it?

10          MR. EISEN: Yes, I think some of the partnership  
11 information was filed with the original application. But,  
12 moreover, I think Mr. Block, maybe not intentionally so, has  
13 mischaracterized the issue. He has referenced a time frame  
14 without being specific. This is a financial  
15 misrepresentation issue. It is not a general financial  
16 issue on -- and we talked at the first pre-hearing  
17 conference, adding finitely, about the time period that this  
18 issue was related to on. And I think that the request  
19 itself, like many of the trial staff's requests, are overly  
20 broad and not tailored to induce any kind of evidence that  
21 is relevant.

22          And I might also say, Your Honor, there were  
23 three, I believe, non-objections. So, the idea of  
24 stonewalling that Mr. Block used before, I think is  
25 inappropriate. I have not gotten one telephone call from

1 the trial staff about this discovery. Moreover, I don't  
2 believe that there are documents that relate to those three  
3 no objection areas that I noted in my opposition.

4 MR. BLOCK: Your Honor?

5 JUDGE CHACHKIN: Yes, Mr. Block.

6 MR. BLOCK: Let's take these issues one at a time?

7 JUDGE CHACHKIN: All right.

8 MR. BLOCK: The November 2, 1990 start date. Mr.  
9 Eisen would like to see the start date as January 1991, when  
10 the fifth request for extension was filed.

11 JUDGE CHACHKIN: Well, let's take the November 2nd  
12 date --

13 MR. BLOCK: Okay.

14 JUDGE CHACHKIN: -- since that is the date,  
15 apparently, that there was a lawsuit.

16 MR. BLOCK: That is correct.

17 JUDGE CHACHKIN: All right.

18 MR. BLOCK: That was the reason we went -- that is  
19 why it is two months earlier and there is ample precedent in  
20 the case law, --

21 JUDGE CHACHKIN: So, let me ask you this then?

22 MR. BLOCK: Yes.

23 JUDGE CHACHKIN: You are asking for documents  
24 which were created on or after November 2, 1990, not  
25 documents which existed before then?

1           MR. BLOCK: In the context of these requests for  
2 documents, these are for documents that were in affect  
3 between this time period. And Encore Corporation would not  
4 be something that would be defrayed to 1992 or created in  
5 1982 -- would still be subject to this request because it  
6 was a document which existed and --

7           JUDGE CHACHKIN: Well, how is that relevant? I  
8 thought both parties agreed and, in fact, you disagree with  
9 me and Paul urged that the -- it was only with your interest  
10 in the period, what is it? In the fifth extension?

11          MR. BLOCK: Fifth extension, yes.

12          JUDGE CHACHKIN: Fifth extension of time request.

13          MR. BLOCK: Right.

14          JUDGE CHACHKIN: And what relevancy is then to  
15 documents going back to 1982?

16          MR. BLOCK: Well, the question is, what did they  
17 have in mind, what was their support, what was there that  
18 they were relying on when they stood on their fifth request,  
19 they were ready, willing and able to construct? Now, the  
20 narrow question is what were they relying on? The broader  
21 question is what did they have -- have they misrepresented  
22 something? Which requires us to go and look at the raw  
23 data, the hard data that relates to that.

24          JUDGE CHACHKIN: How does the raw data going back  
25 to 1982 relate to representations which were made in --

1           MR. BLOCK: Well, we are not asking for financial  
2 information going back that far. This is the organizational  
3 questions. Let's take a look --

4           JUDGE CHACHKIN: I mean, if you would have asked  
5 for requests that you put it -- all the documents that they  
6 relied on in representing to the Commission that they had  
7 sufficient funds to go forward, that would seem to me to be  
8 the type of issue which specifically would go to the issue  
9 of whether or not they had sufficient financial wherewithal.

10          MR. BLOCK: You are absolutely right Your Honor,  
11 but we are not limited to that. We are entitled to --

12          JUDGE CHACHKIN: It has to be relevant to the  
13 issue.

14          MR. BLOCK: No, it has to be --

15          JUDGE CHACHKIN: First, let me disabuse Mr. Cole  
16 for his view about what constitutes -- I have looked at  
17 Section 1.325, Mr. Cole, and I am afraid your interpretation  
18 is not consistent with 1.325. Under 1.325, which refers to  
19 1.311(b), scope of examination, it says, "persons and  
20 parties may be examined regarding any matter not privileged  
21 which is relevant to the hearing issue."

22                 Now, the part that you misunderstood, it says, "it  
23 is not ground for objection for use of these procedures,  
24 that the testimony or the documents will be inadmissible at  
25 the hearing, if the testimony or documents sought appears

1 reasonably calculated to lead to discovery of admissible  
2 evidence." That's the test. Not the way you put it.  
3 Relevance is the key. It has to be relevant to the issue.

4 But a person cannot object on the grounds that a  
5 particular document, or testimony is inadmissible, if it  
6 could lead to admissible evidence.

7 In other words, hearsay, something like that,  
8 which would be inadmissible on the grounds of hearsay.  
9 Someone could urge -- but that is what the rule says. Not  
10 the way you put it. So they were right, Rainbow, in saying  
11 that the test is whether it is relevant to the issue.

12 MR. COLE: With all due respect, Your Honor, the  
13 ruling you just read is a direct parallel to Rule 26(b) of  
14 the federal rules. The only difference is the words, the  
15 hearing issue versus the subject matter of this suit.

16 JUDGE CHACHKIN: Fine.

17 MR. BLOCK: Under the federal rules -- let me read  
18 you a squib from a case -- I picked it out of Wright &  
19 Miller. But, I think this -- I agree with Mr. Cole, that  
20 the question of relevance is, obviously, the key question  
21 but, what is it relevant to?

22 JUDGE CHACHKIN: It just has to be relevant to the  
23 issue?

24 MR. BLOCK: To the issue, but not necessarily  
25 the -- only the issue as it is stated by the Commission.

1 Discovery has a broader purpose of --

2 JUDGE CHACHKIN: Wait for a second. What is the  
3 relevance? It's not relative to our selling something to  
4 China.

5 MR. BLOCK: No, no. But the issue -- but it is  
6 relevant to the trial of the issue, which may not  
7 necessarily be just a fact that may be pigeon-holed to the  
8 point. Let me read you this squib and I will give you the  
9 case later.

10 "Documents may be reached under discovery rules  
11 when they might give clues as to the existence or location  
12 of relevant facts, or when they might be useful for purposes  
13 of impeachment or corroboration."

14 That is from U.S. v. 622.508 Acres of Land,  
15 Northern District of Ohio, 1959.

16 JUDGE CHACHKIN: Well, that is not different than  
17 what the Commission says?

18 MR. BLOCK: No, no, of course, not. It's the same  
19 --

20 JUDGE CHACHKIN: It has to be relevant to the  
21 issue.

22 MR. BLOCK: But it things that may go to  
23 impeachment, rather than just taking the answer of the  
24 witness, be able to have the --

25 JUDGE CHACHKIN: I'm not saying you have to do

1 that.

2 MR. BLOCK: Well, then, articles of incorporation,  
3 financial information, the checks that he wrote, what --

4 JUDGE CHACHKIN: The question is, whether these  
5 documents you seek are relevant to the issue as the  
6 Commission designated it. If they could lead to admissible  
7 evidence, it wouldn't be a basis for objecting to it.

8 MR. BLOCK: Right.

9 JUDGE CHACHKIN: But they are relevant to the  
10 issue. But you have to demonstrate they are relevant to the  
11 issue. Is it relevant to the issue to go into the  
12 background, what happened in 1982? That is the question.

13 MR. BLOCK: No, but it is a relevant issue to find  
14 out whether or not -- what the articles of incorporation  
15 say, who the stockholders are, even --

16 JUDGE CHACHKIN: In the first place, those  
17 documents are probably in public file.

18 MS. POLIVY: Your Honor, they are.

19 MR. EISEN: It's not a corporation, Your Honor.  
20 It was a partnership.

21 MS. POLIVY: Your Honor?

22 MR. BLOCK: But when you file an application you  
23 are required to submit a lot of this information. So if you  
24 are interested in the background of this corporation, I  
25 assume you look at the Commission's files.



1 JUDGE CHACHKIN: Well, let's look at number three,  
2 for example.

3 MS. POLIVY: Your Honor, may I be heard?

4 JUDGE CHACHKIN: Go ahead, Ms. Polivy:

5 MS. POLIVY: Mr. Block, I am afraid, confuses the  
6 Commission's discovery rules with the federal rules of  
7 discovery. Which are quite different with respect to just  
8 this item. When the Commission adopted their discovery  
9 rules, the reason, I believe if Mr. Block will go back and  
10 check, that the term relevant to the issues was used as  
11 opposed to the subject matter discussion that is in the  
12 federal rules, was to narrow and not to permit the  
13 Commission's rules to be used as a fishing expedition for  
14 other issues.

15 The federal rules, on the other hand, the subject  
16 matter portion that he quotes was an amendment to the  
17 federal rules, subsequently, to broaden the opportunity for  
18 discovery in federal court proceedings. To try to use the  
19 federal court rules as an explanation for what the  
20 Commission's discovery rules mean, as far as how broad you  
21 can be, I believe is misplaced.

22 JUDGE CHACHKIN: Well, I think Ms. Polivy is  
23 right. We are operating under the Commission's rules.  
24 Federal cases have no relevance to the Commission's rules.  
25 There are number of cases dealing with the application of

1 the Commission's rules. And Ms. Polivy is right that the  
2 Commission wanted to go into fishing expeditions. The  
3 request has to be relevant to the issue.

4 MR. BLOCK: I would submit that federal cases that  
5 deal with the question of the scope of discovery, apart from  
6 a question about the definition of what the hearing issue  
7 is. Federal cases that enlighten -- what it means, you have  
8 this scope of discovery to include the search for documents  
9 that may lead to admissible evidence, which the Commission  
10 did adopt. It's a useful and illuminating exercise.

11 But, the point is, let's not get hung up on one  
12 question about stock certificates, or whatever. Let's look  
13 at the question, for example, of cancelled checks.

14 JUDGE CHACHKIN: All right.

15 MR. BLOCK: That's further down the list.

16 JUDGE CHACHKIN: All right. What is --

17 MR. BLOCK: Or records of funds and deposits,  
18 number four.

19 JUDGE CHACHKIN: All right, tell me how three or  
20 four are relevant?

21 MR. BLOCK: The question here is, do we get the  
22 raw materials that we are able then to form questions and  
23 cross-examine the witness, who says he is ready, willing and  
24 able to construct. Do we just take his word for that or do  
25 we get a chance to say, well, I looked through your

1 documents and I see there was no deposit for the last six  
2 months. What was the source of your funds? How did you  
3 intend to construct a station without any money coming in?

4 I am not able to do that if I don't get that  
5 information?

6 JUDGE CHACHKIN: In the first place, the  
7 Commission is not concerned about the ability to operate the  
8 station.

9 MR. BLOCK: I believe it is for the first three  
10 months.

11 JUDGE CHACHKIN: Three months, the first three  
12 months.

13 MR. BLOCK: Yes, that is correct.

14 JUDGE CHACHKIN: We are talking about construction  
15 --

16 MR. BLOCK: But we conclude after the operation --

17 JUDGE CHACHKIN: Expenses is what we are talking  
18 about.

19 MR. BLOCK: Right.

20 JUDGE CHACHKIN: The cost of construction.

21 MR. BLOCK: Right. We conclude the operation date  
22 of June 3rd.

23 JUDGE CHACHKIN: Now, what we are interested in --  
24 I understood we were interested in whether the station had  
25 sufficient funds to build the station and operate it for

1 three months?

2 MR. BLOCK: That is correct.

3 JUDGE CHACHKIN: Now, how does this assist us,  
4 copies of cancelled checks, written on behalf of Rainbow or  
5 the station, assist us in this determination?

6 MR. BLOCK: It allows us to go behind the  
7 statement that it is ready, willing and able --

8 JUDGE CHACHKIN: But they were not operating then.  
9 The had not built the station then. The question is, did  
10 they have the source of funds available?

11 MR. BLOCK: That is correct.

12 JUDGE CHACHKIN: That is the issue?

13 MR. BLOCK: Actually, they were constructing the  
14 station then during that time period because they are  
15 operational on the 3rd of June.

16 MR. MOSKOWITZ: Of 1994.

17 MR. BLOCK: Right. Right. So, at some point they  
18 had to be constructing.

19 JUDGE CHACHKIN: But why do we want to know  
20 cancelled checks? The fact that they might have written a  
21 check for who knows what?

22 MR. BLOCK: Is it possible that something might  
23 come out of this? Yes. Is it possible that nothing could  
24 come out --

25 JUDGE CHACHKIN: How? What could come out of

1 this?

2 MR. BLOCK: -- I don't know.

3 JUDGE CHACHKIN: What could come out of it? If  
4 you get all the cancelled checks, how is that going to  
5 assist you in the running of the station -- how is that  
6 going to assist you whether they had funds at the time of  
7 the fifth extension request?

8 MR. BLOCK: Your Honor, you are making one error  
9 here. We are not asking for cancelled checks after the  
10 station began running. We are asking for cancelled checks  
11 up to the time the station was operational, which is the  
12 construction period. So, we want to see what money they  
13 spent for construction?

14 JUDGE CHACHKIN: What difference does it make what  
15 money they spent on construction?

16 MS. POLIVY: Your Honor, the issue here is whether  
17 we misrepresented -- or Rainbow Broadcasting misrepresented  
18 with respect to its financial qualification in the fifth and  
19 sixth extension applications. I mean, I think, we are going  
20 way far field here.

21 MR. BLOCK: And how do you prove that question?

22 JUDGE CHACHKIN: Well, you prove it by --

23 MS. POLIVY: We have the burden of proof in  
24 proceeding.

25 JUDGE CHACHKIN: But you have a write to find out

1 from them what was their source of funds which they intended  
2 to rely on at the time they represented to the Commission  
3 that they had funds available. That's the key. That's what  
4 you want to know.

5 MR. EISEN: At the time of the fifth and sixth  
6 extension.

7 JUDGE CHACHKIN: Yes. I mean, that is the key.  
8 You want to know what was the source of funds? Who were  
9 they going to rely on? If they were going to rely on  
10 equity, what was the nature of the equity? If they were  
11 going to rely on loans, from who these loans were going to  
12 be?

13 MR. EISEN: Your Honor?

14 JUDGE CHACHKIN: I mean that is the area.

15 MR. EISEN: May I make one comment? We are  
16 spending a lot of time on this and I know counsel has some  
17 strong opinions on it, rightly or wrongly, and I know you do  
18 too, as we all do. I think that when counsel, for the  
19 separate trial staff, sees this motion for summary decision  
20 this afternoon, much of what he is complaining about will  
21 probably be resolved.

22 JUDGE CHACHKIN: Well, I doubt it frankly. But,  
23 all we have there is --

24 MR. EISEN: Well, in the way of documents.

25 JUDGE CHACHKIN: Well, all we have there is an

1 affidavit from the man who was going to loan the station  
2 money. And an affidavit from Mr. Rey. And I just didn't  
3 look at it completely but, apparently, he is trying to say  
4 that when he made statements, he was in error, or what have  
5 you -- when he made statements to the court. Things of that  
6 nature, concerning funds. If I read it correctly. That is,  
7 basically, saying Conant had the funds to loan the  
8 corporation money.

9 MR. EISEN: Right.

10 JUDGE CHACHKIN: That is the argument. But I am  
11 not saying that the party is not precluded from -- they have  
12 to accept this version and that they can't --

13 MR. EISEN: Oh, no, I am not talking about the  
14 requirements.

15 JUDGE CHACHKIN: -- requiring into all the rest.

16 MR. EISEN: I am not talking about the merits of  
17 the argument or the declarations. I am simply talking about  
18 documents that would be available to show him.

19 JUDGE CHACHKIN: But the only documents is to  
20 Conant.

21 MR. EISEN: Yes, yes. That's right.

22 JUDGE CHACHKIN: -- that is available.

23 MR. EISEN: That's it.

24 MR. BLOCK: Your Honor, I might point out, they  
25 have also objected to number 14, which you just -- I think,

1     paraphrased an example, and he said it is relevant. They  
2     say it is irrelevant.

3             UNIDENTIFIED SPEAKER: Can we go and order them?

4             JUDGE CHACHKIN: Well, I am not saying I agree  
5     with it, I am just trying to understand these questions  
6     here, which just ask for, as you say, for --

7             MR. BLOCK: Well, I will make it easy for you.

8             JUDGE CHACHKIN: All right. Make it easy for me.

9             MR. BLOCK: Our intent was to get to the raw data.  
10     If you think that is too broad --

11            JUDGE CHACHKIN: Raw data which bears on their  
12     ability to build and operate the station.

13            MR. BLOCK: That is correct.

14            JUDGE CHACHKIN: But, I don't see how cancelled  
15     checks, written on behalf of the station, or records of the  
16     deposit of funds -- well, maybe copies of all records of  
17     deposit of funds by or on behalf of Rainbow, copies of tax  
18     returns. I don't understand what that is going to have to  
19     do with the ability to finance the station. And how that is  
20     going to provide any information on that.

21            MR. BLOCK: I think we have a disagreement and you  
22     are the Judge.

23            MR. BLOCK: Yes. Well, I am --

24            MR. BLOCK: Well, it is all over then, it seems to  
25     me.



1 JUDGE CHACHKIN: The purpose of the conference was  
2 to get some --

3 MR. BLOCK: Right.

4 JUDGE CHACHKIN: -- understanding from the parties  
5 what they had in mind? Whether it was relevant to the  
6 issues? I mean, not to just throw out requests, unless it  
7 bears on the issue that the Commission designated?

8 MR. COLE: Your Honor?

9 JUDGE CHACHKIN: Yes.

10 MR. COLE: May I be heard?

11 JUDGE CHACHKIN: Yes.

12 MR. COLE: A problem that we run into in this case  
13 is that the representations concerning financial  
14 qualification made by Rainbow in its applications are  
15 extraordinarily broad. And when they were questioned by  
16 press, in the early pleading stages, where press came in and  
17 said, it appears to us that you are financially unqualified  
18 based on representations made in a Miami hearing before  
19 Judge Marcus.

20 Again, the responses were extraordinarily vague.  
21 There was no indication of how they were financing  
22 themselves, what they were relying on. I think, in light of  
23 the vagueness of the representations given by Rainbow at all  
24 stages of this proceeding, what is important for us to do in  
25 the hearing phase is to examine, carefully, what Rainbow's

1 financial situation was at all times relevant.

2 That is, starting in January -- or say,  
3 November 2, Mr. Block's start date as of the time of the  
4 initiation of the Miami case, and see what their financial  
5 situation actually was. Because, bear in mind, in January  
6 of 1991, they told the FCC, we are ready, willing and able  
7 to build, while down in Miami, they are prosecuting a  
8 preliminary injunction request. The gravitiment of which  
9 was, they were not financially qualified.

10 MS. POLIVY: Your Honor, that is not --

11 MR. EISEN: That is not true.

12 JUDGE CHACHKIN: Well, I am not going to argue  
13 with that. The point of the matter, even assuming -- you  
14 laid out what the issue is, how does this bear on that  
15 issue? These questions that you have asked here? You have  
16 also asked, Mr. Cole? How does this bear on the issue? How  
17 are the cancelled checks written on behalf of Rainbow, going  
18 to provide illumination as to whether or not they were  
19 financially qualified there?

20 MR. COLE: Again, --

21 JUDGE CHACHKIN: Ability to build?

22 MR. COLE: Again, Your Honor, if the question is,  
23 what was Rainbow's financial situation --

24 JUDGE CHACHKIN: What do you mean by Rainbow's  
25 financial situation? I don't understand what that means.

1 What do you mean by Rainbow's financial situation?

2 MR. COLE: Well, as of June of 1991, according to  
3 Judge Marcus, they had no financial qualifications at all,  
4 based on --

5 JUDGE CHACHKIN: In other words, well --

6 MS. POLIVY: Your Honor, that is not true.

7 JUDGE CHACHKIN: Well, wait a minute. Wait a  
8 minute. Still the issue would be, did they represent -- was  
9 it a misrepresentation at that time to tell the Commission  
10 that, in fact, they did have a source of funds available to  
11 build and operate?

12 MR. EISEN: That's the issue.

13 JUDGE CHACHKIN: That is still the issue. And you  
14 have a right to inquire into that issue. But what are all  
15 these other documents -- how is that going to illuminate the  
16 issue?

17 MR. COLE: At no point did they specify what their  
18 source was --

19 JUDGE CHACHKIN: I understand that. And that is  
20 the purpose of discovery and that is the nature of the  
21 issue. You just set it forth. That is the issue. Now, if  
22 any of the document requests illuminate that issue, fine. I  
23 will permit it. But, if you find out about cancelled checks  
24 that were written on behalf of the station during 1990 and  
25 1994, how is that going to provide any evidence whether they

1 had the ability to build a station in 1990 when they made  
2 representations?

3 MS. POLIVY: Your Honor, may I make a suggestion?  
4 That --

5 JUDGE CHACHKIN: You tell me, Mr. Cole? You have  
6 asked that request also, tell me?

7 MR. COLE: Again, Your Honor, I believe --

8 JUDGE CHACHKIN: That is going to give that  
9 information.

10 MR. COLE: I believe it is important to the record  
11 of this trial for us to have a very clear and comprehensive  
12 understanding of what Rainbow's financial situation was, to  
13 the extent that they are represented to the Commission in  
14 the biggest and broadest of terms, they were financial  
15 qualified without providing any specifics as to that.  
16 While, at the same time, they are representing to the court,  
17 that they would not be able to build and not be able to  
18 obtain any financing at all, absent a preliminary  
19 injunction.

20 JUDGE CHACHKIN: Well, --

21 MS. POLIVY: Your Honor, may I make a suggestion?

22 JUDGE CHACHKIN: Go ahead.

23 MS. POLIVY: The issue is whether Rainbow  
24 misrepresented regarding its fifth and sixth extension. The  
25 question then, it seems to me, becomes what documents --

1 give us any documents you are relying upon that demonstrate  
2 your financial qualification as of what ever date? Because  
3 the question is going to be, what Rainbow was relying on?  
4 Not what Mr. Block or Mr. Cole would like to conjure up as  
5 to what they could have been relying on, or not.

6 The question is, what was Rainbow relying upon  
7 when it made its representation that it was financially  
8 qualified? And I don't think that beyond that, there is --

9 JUDGE CHACHKIN: Well, number eight, which is no  
10 objected to, seems to ask for that information.

11 MS. POLIVY: Well, I think that is the issue.

12 JUDGE CHACHKIN: But there wasn't any objection  
13 there. Why weren't those documents provided?

14 MR. EISEN: Well, the document is now provided.

15 JUDGE CHACHKIN: Where?

16 MR. EISEN: It is an attachment to the motion for  
17 summary decision. And I will be happy to send a --

18 JUDGE CHACHKIN: Are you saying that is all the  
19 documents that exist concerning loans, negotiations for  
20 loans, lines of credit --

21 MR. EISEN: Yes.

22 JUDGE CHACHKIN: -- during the four years of 1990  
23 to 1994?

24 MR. EISEN: 1991 to 1993 -- that we have  
25 restricted the scope of the misrepresentation issue to, that

1 is true, yes.

2 JUDGE CHACHKIN: And what about November 2, 1990?

3 MR. EISEN: It still would have been the same.

4 JUDGE CHACHKIN: Well, I have heard from the  
5 parties. As far as one goes, there are documents in the  
6 public records dealing with the formation of the  
7 corporation. I assume they also contain --

8 MR. EISEN: It is a partnership.

9 JUDGE CHACHKIN: Partnership agreements. I am not  
10 going to require anything more because I don't see how that  
11 is relevant. Promissory notes, or notes executed by  
12 Rainbow, in connection with its investment of the station, I  
13 am going to require those documents if they exist. If there  
14 are any promissory notes outstanding, they will be required  
15 to be submitted.

16 Cancelled checks written by, or on behalf of,  
17 Rainbow, I don't see how that is relevant to the issue. I  
18 am not going to require that.

19 Copies of records of deposit of funds by, or on  
20 behalf of, Rainbow, or the station -- I will require that  
21 you need to produce that.

22 MS. POLIVY: What number is that, Your Honor?

23 JUDGE CHACHKIN: Number four. As far as tax  
24 returns are concerned, what do you expect to get out of tax  
25 returns, Mr. Block or Mr. Cole? I think you have made a

1 similar --

2 MR. COLE: Yes, Your Honor. My view on tax  
3 returns is that, again, there is the threshold question of  
4 the overall picture of Rainbow, but also, it will provide us  
5 with specific information concerning, through the K-1s at  
6 least, the identity of the participants of Rainbow Limited.

7 Again, the going back to Rainbow's representations  
8 throughout the pleadings stage, the suggestion was made  
9 and -- in the vaguest of suggestive terms, that Rainbow  
10 intended to rely on equity rather than debt funding. If  
11 that is the case then, presumably, the limited partners and  
12 their relative size of the relevant investments, will be  
13 relevant to how Rainbow, ultimately, came to be funded, if  
14 their representations were, in fact, accurate that they were  
15 relying on equity rather than debt funding.

16 MS. POLIVY: Your Honor, may I be heard?

17 JUDGE CHACKIN: Yes.

18 MS. POLIVY: Because this does go to a larger  
19 issue. And that is the position of Rainbow Broadcasting  
20 Limited. Rainbow Broadcasting Limited did not, and has so  
21 stated, provide any funds to Rainbow Broadcasting Company  
22 for the construction and operation of the station. They  
23 were not an entity that Rainbow Broadcasting Company was  
24 relying on at any time.

25 Rainbow Broadcasting Limited constructed the

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1 station after the Commission granted the assignment. There  
2 is no question as to the possibility of misrepresentation by  
3 Rainbow Broadcasting Limited, nor is anything in the  
4 assignment application been set in the issues in this  
5 proceeding.

6 The effort to discover against Rainbow  
7 Broadcasting Limited is well beyond these issues. If  
8 Rainbow Broadcasting Limited has relevant information  
9 regarding Rainbow Broadcasting Company, I think that that is  
10 appropriate. But, certainly, the effort to discover upon  
11 the operation of Rainbow Broadcasting Limited is nothing but  
12 a fishing expedition. As far as the contributions of  
13 Rainbow Broadcasting Limited's limited partners, they were  
14 made to make to Rainbow Broadcasting Limited. None of that  
15 money was paid to Rainbow Broadcasting Company.

16 Rainbow Broadcasting Company did not provide a  
17 line of credit, did not provide a loan, did not provide  
18 anything to Rainbow Broadcasting Company. And Rainbow  
19 Broadcasting Company at no point, relied upon Rainbow  
20 Broadcasting Limited to demonstrate its financial  
21 qualifications.

22 The statement to which Mr. Cole has referenced,  
23 deals with the request that the pro forma assignment from  
24 Company to Limited be granted because Rainbow Broadcasting  
25 Company said at that point, that among other reasons for



1 granting the assignment, was the fact that this would permit  
2 Rainbow to build the station as a limited partnership,  
3 thereby using equity instead of availing itself of the  
4 financial proposal that it had as Rainbow Broadcasting  
5 Company.

6 That does not open Rainbow Broadcasting Limited to  
7 examination of its finances because that goes beyond the  
8 issues.

9 MR. COLE: Your Honor, if I might?

10 JUDGE CHACHKIN: Yes.

11 MR. COLE: Again, through the course of the  
12 pleading stage, when financial questions were raised about  
13 Rainbow Broadcasting Company, Rainbow Broadcasting Company  
14 insisted on saying, vaguely, that they intended to rely, or  
15 they might prefer to rely more on equity rather than debt  
16 financing.

17 MS. POLIVY: That is --

18 MR. COLE: The matter --

19 MS. POLIVY: -- a mischaracterization, Mr. Cole.

20 MR. COLE: The record will speak for itself.

21 MS. POLIVY: No, the pleadings will speak --

22 MR. COLE: The record will speak for itself. In  
23 the eyes --

24 MS. POLIVY: Then put the pleadings out and stop  
25 characterizing them.